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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-223225

DATE: July 29, 1986

MATTER OF: Joseph F. Friedkin - Lump-Sum Payment for
Accumulated Annual Leave

DIGEST:

Employee, with accumulated annual leave, resigned competitive position without a break in service to accept presidential appointment to a position exempted from coverage under the Annual and Sick Leave Act of 1951, as amended. He later resigned presidential appointment and, without break in service, was reappointed to competitive position covered by Leave Act. When he was appointed to the exempted position he was not paid for his annual leave balance. The balance was recredited when he was reappointed to the competitive position. Upon retirement from that position he became entitled to lump-sum payment for annual leave at then current rate of compensation. See 5 U.S.C. § 5551 and § 6302(e).

This decision is in response to a letter dated May 22, 1986, from Mr. Alfredo Valdez, an Authorized Certifying Officer for the International Boundary and Water Commission, United States and Mexico, requesting an advance decision as to the amount of lump-sum leave payment due Mr. Joseph F. Friedkin, the former Commissioner of the United States Section.

Mr. Valdez reports that on April 2, 1962, Mr. Friedkin was appointed Commissioner of the United States Section of the International Boundary and Water Commission, United States and Mexico, having resigned his position as Supervisory Civil Engineer (with a pay rate of \$15,030 per annum) on March 31, 1962, to become the Commissioner. At the time of his resignation Mr. Friedkin had an annual leave balance of 470 hours. Mr. Friedkin served under the presidential appointment as Commissioner from April 2, 1962 (pay rate of \$19,800 per annum) until May 10, 1986, when he voluntarily resigned the position of Commissioner (then paying the rate of \$70,500 per annum). Without a break in service Mr. Friedkin was then appointed as a Hydraulic

Engineer, Staff, on May 11, 1986 (paying the rate of \$67,940 per annum), and allowed to carry forward the 470 hours annual leave saved from the date of his appointment as Commissioner in 1962. Mr. Friedkin voluntarily retired from government service on May 30, 1986, with an accumulated balance of 478 hours of annual leave. Mr. Valdez requests our decision as to the proper rate of pay to be used in determining the lump-sum payment for accumulated annual leave due upon Mr. Friedkin's separation.

The position of Commissioner, United States Section, International Boundary and Water Commission, United States and Mexico, is a position in the Executive Branch excepted from coverage under the Annual and Sick Leave Act of 1951, as amended by 5 U.S.C. §§ 6301(2)(x)-(xii). As a result, under 5 U.S.C. § 5551(a) when an employee is appointed to that position, he or she is not entitled to payment for accumulated and accrued annual leave at that time. Under such circumstances, the leave is considered to remain to his or her credit to serve as the basis for a lump-sum payment when he or she is separated from the excepted position or as the basis for a recredit if he or she is later employed in a position covered by the leave law. See, for example, 40 Comp. Gen. 164 (1960); 33 Comp. Gen. 177 (1953); B-165516, November 22, 1968.

On May 11, 1986, Mr. Friedkin was appointed without a break in service to a competitive position as a Hydraulic Engineer, Staff, and our inquiries show that Mr. Friedkin was qualified for the position, properly appointed to the position, and performed services benefiting the government while in the position. Entering upon this position, Mr. Friedkin again became subject to the leave law and his 470 hours of prior service were recredited to him in accordance with 5 U.S.C. § 6302(e), which provides that "if an officer excepted from this subchapter by section 6301(2)(x)-(xii) of this title, without a break in service, again becomes subject to this subchapter on completion of his service as an excepted officer, the unused annual and sick leave standing to his credit when he was excepted from this subchapter is deemed to have remained to his credit."

Thus, Mr. Friedkin was entitled to be credited with the same amount of accumulated and current accrued annual and sick leave to which he was entitled immediately prior to the beginning of his period of excepted service. Upon

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his retirement, Mr. Friedkin's lump-sum leave payment is to be computed under 5 U.S.C. 5551(b) which requires liquidation of annual leave to be at the last rate of compensation received immediately prior to such lump-sum payment. See B-173251, August 19, 1971, reviewing the legislative history of 5 U.S.C. 5551(b).

It follows that since Mr. Friedkin was reappointed to a competitive position as a Hydraulic Engineer, Staff, at the rate of pay of \$67,940 per annum, on May 11, 1986, that rate of pay divided by 2,087 hours is the proper basis for computing the lump-sum payment that became due upon his retirement on May 30, 1986.

for Milton F. Aroslan
Comptroller General
of the United States